THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION NO.25254 OF 2003

-

DATED 03.08.2005

-

-

Between:

J. Bhaskar … PETITIONER.

AND

APSRTC, rep., by its Depot Manager,

& another. … RESPONDENTS.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

ORAL ORDER:-

The writ petition is filed seeking a Certiorari calling for the records and quash the award, dated 24.04.2003 passed by the 2nd respondent herein in I.D.No.159 of 2001 and consequently direct the 1st respondent reinstate the petitioner into service as Electrician with all consequential and attendant benefits together with backwages.

The grievance of the petitioner is that he was initially appointed as cleaner in the

respondent – Corporation on 06.11.1975 and subsequently promoted to the post of Electrician w.e.f. 08.12.1980. While so, the Assistant Mechanical Foreman, Ravulapalem Depot, issued charge sheet on 29.12.1998 alleging that the petitioner was absent unauthorizedly from 19.12.1998 to 28.12.1998. Thereafter, enquiry was conducted and without communicating the enquiry report or issuing show cause notice, the petitioner was removed from service by an order, dated 09.06.2000. Aggrieved by the same, the petitioner preferred an appeal and the same was rejected on 30.08.2000, and thereafter, he preferred revision and the same was also rejected on 28.11.2000. Aggrieved by the said orders, the petitioner filed an Industrial Dispute in I.D.No.159 of 2001 before the 2nd respondent and the 2nd respondent passed Nil award, dated 24.04.2003, holding that unauthorized absence was proved. Against the said order, the present writ petition has been filed.

Learned counsel for the petitioner contended that for the absence of 10 days, a major penalty of dismissal from service was ordered. He also contends that without conducting proper enquiry, issuance of dismissal order is violative of principles of natural justice, therefore, he prays to allow the writ petition.

On the other hand, learned standing counsel for the 1st respondent contended that it is not the first occasion for absence without informing the concerned authorities and once the petitioner was removed from service, he did not mend himself and therefore, there are absolutely no grounds to interfere with the award passed by the Labour Court.

For not attending the duties from 19.12.1998 to 28.12.1998, a charge has been framed against the petitioner. As the explanation given by the petitioner was not satisfactory, departmental enquiry was conducted against him after following due procedure. The enquiry officer STI conducted a detailed enquiry and submitted a report to the disciplinary authority. Having accepted with the findings of the enquiry officer's report, a show cause notice was issued to the petitioner. The said show cause notice was not served on the petitioner on the ground that there was no such person in that address. Therefore, the disciplinary authority passed order of removal from service. The appeal is also confirmed. Challenging the same, the petitioner raised an Industrial Dispute before the Labour Court. The Labour Court, after

considering the entire material on record, came to the conclusion that the punishment imposed on the petitioner is not shockingly disproportionate to the proved misconduct and dismissed the same. Admittedly, the petitioner was not present for duties for 10 days as per the charge. The absentism of 10 days is the reason for the dismissal. Thus it can be said certainly it is disproportionate to the proved misconduct, but here is a case where the petitioner was irregular in the year 1998-99 also and he was removed from service for his unauthorized absence. In this background it is to be seen whether the absence of the petitioner was willful or caused any dislocation of work. The petitioner being an electrician, belongs to the category of essential service, he is expected to be more careful in absenting himself without sanction of leave or prior permission from the competent authority. Though it is contended that no opportunity was given to the petitioner in the enquiry, but no such plea has been raised in the application under Section 2(a)(2) of the I.D. Act.

On the other hand, the workman filed a memo before the tribunal not questioning the validity of the domestic enquiry. Therefore, the petitioner cannot turn round and say that the principles of natural justice have been violated in conducting the enquiry. There cannot be any dispute that it is for the disciplinary authority and the appellate authority or authorities, to impose appropriate punishment depending upon the gravity of the misconduct. Unless the findings are based upon no evidence or the findings are perverse, normally this Court will not interfere with the administrative decision. It is well settled that if the punishment is shocking to the conscience of the Court or disproportionate to the proved misconduct, this court interferes with the punishment.

Learned counsel for the petitioner placed strong reliance on the decision of the Apex Court in ***SHRI BHAGWAN LAL ARYA v COMMISSIONER OF POLICE, DELHI*** wherein the Apex court held as follows:

> "In B.C. Chaturvedi v. Union of India (three Judge bench) (1995 (6) SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44: Air 1996 SC 484 the question posed for considerationas as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under: (SCC p.762)

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The HighCourt/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

There is no dispute about the proposition of law laid down by the Apex Court where relief can be mould if the punishment is shocking to the conscience of the Court. Now the only question to be answered in this writ petition is that whether the sentence is disproportionate to the proved misconduct. Though, the charge relates to absence of 10 days, at the same time the disciplinary authority as well as the appellate authority and also the Tribunal has taken note of the previous conduct of the petitioner and imposed the punishment. The petitioner was unauthorizedly absent and irregular in attending duties in the year 1998-99. The petitioner was also removed from service on 23.04.1998 on the similar ground of unauthorized absence. Though the petitioner has given an explanation that because of jaundice he was absent, the same has not been accepted. The jaundice is not such a disease that immobilizes the petitioner in not informing the competent authorities. The petitioner ought to have taken prior permission from the concerned authorities. Since he belongs to the essential category of service, he is supposed to be more careful. If it is a case of absentism of 10 days certainly the same could be shocking to the conscience of the Court, but here is a case where the petitioner is regular absentee without informing the competent authorities. Having taking into consideration the previous conduct of the petitioner, the disciplinary authority has been imposed the appropriate punishment, and the appellate authority as well as the Industrial Tribunal has confirmed the same.

In the circumstances, I find no grounds to interfere with the impugned proceedings.

Accordingly, the writ petition is dismissed. No orders as to costs.

_____

K.C. BHANU, J

Date: 03.08.2005

ES